

# September 2003

## Update: Criminal Procedure Monograph 6—Pretrial Motions (Revised Edition)

### 6.10 Motion for Adjournment or Continuance

Insert the following language at the bottom of page 9:

See also *People v Coy*, \_\_\_ Mich App \_\_\_, \_\_\_ (2003) (trial court properly denied a defendant’s request for adjournment, where the motion was made on the first day of trial and “[t]here was no evidence that [defendant] made any effort, much less a diligent one, to locate [the witness] before requesting the adjournment”). Citing to the Michigan Supreme Court’s decision in *People v Jackson*, 467 Mich 272, 276 (2002) (included in the October 2002 update to this monograph), the *Coy* Court ruled that in addition to his failure to exercise diligence, the defendant failed to establish good cause for an adjournment. *Coy, supra* at \_\_\_.

The defendant in *Coy, supra*, similarly failed to establish good cause for an adjournment to complete DNA testing of an individual’s blood sample taken one week before trial. *Coy, supra* at \_\_\_. The trial court denied the defendant’s motion to adjourn until the DNA tests on the individual’s blood were complete because the individual’s alibi was corroborated, he was not considered a suspect, the defendant was dilatory in requesting the blood tests, and the individual’s involvement in the victim’s death was highly speculative. *Id.* at \_\_\_.

## 6.10 Motion for Adjournment or Continuance

Insert the following case summary on page 10 before the paragraph beginning with “Where the defendant is not at fault . . .”:

A trial court abused its discretion when it refused to grant the prosecution’s motion for adjournment after the complainant and two other prosecution witnesses failed to return to court following a lunch recess. *People v Grace*, \_\_\_ Mich App \_\_\_, \_\_\_ (2003). In *Grace*, the trial court dismissed the charge against the defendant after 17 minutes elapsed following a lunch recess and the complainant and two primary witnesses had not yet returned. *Grace, supra* at \_\_\_\_\_. The Court of Appeals noted that the record showed the missing witnesses’ testimony was material to the case, the prosecutor had attempted to locate them, and the witnesses’ history suggested their continued cooperation. *Grace, supra* at \_\_\_\_\_.

## 6.23 Motion to Dismiss Because of Double Jeopardy— Successive Prosecutions for the Same Offense

### 2. Retrial for the Same Offense After Declaration of a Mistrial

Insert the following text on page 52 after the first sentence of the third paragraph (referring to *People v Bommarito*):

A defendant's right against double jeopardy is not violated when a trial court reinstates a defendant's charge after granting the defendant's motion to dismiss when the complainant and two other prosecution witnesses failed to return on time after a lunch recess. *People v Grace*, \_\_\_ Mich App \_\_\_, \_\_\_ (2003). The defendant in *Grace* requested and received a dismissal, which is the equivalent of the defendant's consent to a mistrial, after which retrial on the same charge is constitutionally permissible. *Grace, supra* at \_\_\_.